Proposed Amendments to the Local Rules of Court
of the U.S. District Court for the Middle District of Pennsylvania
to become effective December 1, 2006

Note: New or amended text is redlined and deleted text is stricken. An edited version of the rule follows each comment section.

1. LR 7.8 Contents and Length of Pretrial Briefs.

(a) Contents of Briefs.

Briefs shall contain complete citations of all authorities relied upon, including whenever practicable, citations both to official and unofficial reports. No brief may incorporate by reference all or any portion of any other brief. A copy of any unpublished opinion which is cited must accompany the brief as an attachment. The brief of the moving party shall contain a procedural history of the case, a statement of facts, a statement of questions involved, and argument. The brief of the opposing party may contain a counter statement of the facts and of the questions involved and a counter history of the case. If counter statements of facts or questions involved are not filed, the statements of the moving party will be deemed adopted.

The brief of each party, if more than fifteen (15) pages in length, shall contain a table of contents, with page references, and table of citations of the cases, statutes and other authorities referred to therein, with references to the pages at which they are cited. A brief may address only one motion, except in the case of cross motions for summary judgment.

(b) Length of Briefs.

(1) Unless the requirements of Local Rule 7.8 (b)(2) and (3) are met, no brief shall exceed fifteen (15) pages in length.

(2) A brief may exceed fifteen (15) pages so long as it does not exceed 5,000 words. If a brief is filed in accordance with this subsection, counsel, or an unrepresented party, must include a certificate (subject to Fed. R. Civ. P. 11) that the brief complies with the word-count limit described in this subsection. The person preparing the certificate may rely on the word count feature of the word-processing system used to prepare the brief. The certificate must state the actual number of words in the brief.

(3) No brief exceeding the limits described in this rule may be filed without prior authorization. Any motion seeking such authorization shall specify the length of the brief requested and shall be filed at least two (2) working days before the brief is due.

(c) Length of Briefs in Appeals from Bankruptcy Court.

Unless otherwise ordered by the court, the provisions of subparagraph (b) of this rule relating to the length of briefs shall not apply to matters on appeal to the district court from the bankruptcy court.

Explanation: *The proposed amendment adds subparagraph (c) to address a concern over the limitation on the length of briefs filed in appeals from Bankruptcy Court.*

(edited version)

LR 7.8 Contents and Length of Pretrial Briefs.

(a) Contents of Briefs.

Briefs shall contain complete citations of all authorities relied upon, including whenever practicable, citations both to official and unofficial reports. No brief may incorporate by reference all or any portion of any other brief. A copy of any unpublished opinion which is cited must accompany the brief as an attachment. The brief of the moving party shall contain a procedural history of the case, a statement of facts, a statement of questions involved, and argument. The brief of the opposing party may contain a counter statement of the facts and of the questions involved and a counter history of the case. If counter statements of facts or questions involved are not filed, the statements of the moving party will be deemed adopted.

The brief of each party, if more than fifteen (15) pages in length, shall contain a table of contents, with page references, and table of citations of the cases, statutes and other authorities referred to therein, with references to the pages at which they are cited. A brief may address only one motion, except in the case of cross motions for summary judgment.

(b) Length of Briefs.

(1) Unless the requirements of Local Rule 7.8 (b)(2) and (3) are met, no brief shall exceed fifteen (15) pages in length.

(2) A brief may exceed fifteen (15) pages so long as it does not exceed 5,000 words. If a brief is filed in accordance with this subsection, counsel, or an unrepresented party, must include a certificate (subject to Fed. R. Civ. P. 11) that the brief complies with the word-count limit described in this subsection. The person preparing the certificate may rely on the word count feature of the word-processing system used to prepare the brief. The certificate must state the actual number of words in the brief.

(3) No brief exceeding the limits described in this rule may be filed without prior authorization. Any motion seeking such authorization shall specify the length of the brief requested and shall be filed at least two (2) working days before the brief is due.

(c) Length of Briefs in Appeals from Bankruptcy Court.

Unless otherwise ordered by the court, the provisions of subparagraph (b) of this rule relating to the length of briefs shall not apply to matters on appeal to the district court from the bankruptcy court.

2. LR 16.8.3 Compensation and Expenses of Mediators.

The services of the mediator shall be provided *pro bono*. An individual certified as a mediator shall not be called upon more than three times ~~twice~~ in a calendar year to serve as a mediator without prior approval of the mediator.

Explanation: *The proposed amendment increases the number of times an individual certified as a mediator may be called upon to serve during the course of a calendar year. The increase is necessary due to the mandatory mediation program.*

(edited version)

LR 16.8.3 Compensation and Expenses of Mediators.

The services of the mediator shall be provided *pro bono*. An individual certified as a mediator shall not be called upon more than three times in a calendar year to serve as a mediator without prior approval of the mediator.

3. LR 16.8.5 Scheduling Mediation Conference.

(a) When the court makes a determination that referral to mediation is appropriate, it shall issue an order referring the case to mediation, appointing the mediator, directing the mediator to establish the date, time and place for the mediation session and setting forth the name, address, and telephone number of the mediator. The order will also direct the mediator to fix the date for the initial mediation session to be a date within ~~thirty (30)~~ sixty (60) days from the date of the order of referral unless otherwise extended by the Court.

(b) The mediation session shall be held before a mediator selected by the assigned judge from the list of mediators certified by the chief judge.

(c) The clerk shall provide the mediator with a current docket sheet. The mediator shall advise the clerk as to which documents in the case file the mediator desires copies of for the mediation session. The clerk shall provide the mediator with all requested copies.

(d) Any continuance of the mediation session beyond the ~~thirty (30) day period from the date of~~ period prescribed in the referral order must be approved by the assigned judge.

(e) A person selected as a mediator shall be disqualified for bias or prejudice as provided by 28 U.S.C. § 144, and shall disqualify himself or herself in any action where disqualification would be required under 28 U.S.C. § 455 if he or she were a justice, judge, or magistrate judge. A party may assert the bias or prejudice of an assigned mediator by filing an affidavit with the assigned judge stating that the mediator has a personal bias or prejudice. The judge may in his or her discretion end alternative dispute resolution efforts, refer the case to another mediator, refer the case back to the ~~already selected~~ original mediator or initiate another alternative dispute resolution mechanism.

Explanation: *The proposed amendments in subparagraphs (a) and (d) acknowledge that referral orders place different time limits on conducting mediation sessions, not always 30 days. The amendment in subparagraph (e) is not intended to be substantive.*

(edited version)

LR 16.8.5 Scheduling Mediation Conference.

(a) When the court makes a determination that referral to mediation is appropriate, it shall issue an order referring the case to mediation, appointing the mediator, directing the mediator to establish the date, time and place for the mediation session and setting forth the name, address, and telephone number of the mediator. The order will also direct the mediator to fix the date for the initial mediation session to be a date within sixty (60) days from the date of the order of referral unless otherwise extended by the Court.

(b) The mediation session shall be held before a mediator selected by the assigned judge from the list of mediators certified by the chief judge.

(c) The clerk shall provide the mediator with a current docket sheet. The mediator shall advise the clerk as to which documents in the case file the mediator desires copies of for the mediation session. The clerk shall provide the mediator with all requested copies.

(d) Any continuance of the mediation session beyond the period prescribed in the referral order must be approved by the assigned judge.

(e) A person selected as a mediator shall be disqualified for bias or prejudice as provided by 28 U.S.C. § 144, and shall disqualify himself or herself in any action where disqualification would be required under 28 U.S.C. § 455 if he or she were a justice, judge, or magistrate judge. A party may assert the bias or prejudice of an assigned mediator by filing an affidavit with the assigned judge stating that the mediator has a personal bias or prejudice. The judge may in his or her discretion end alternative dispute resolution efforts, refer the case to another mediator, refer the case back to the original mediator or initiate another alternative dispute resolution mechanism.

4. LR 16.8.6 The Mediation Session and Confidentiality of Mediation Communications.

(a) The mediation session shall take place ~~on the date and at the time set forth in the order~~ as directed by the court and the assigned mediator. The mediation session shall take place in a neutral setting ~~as~~ designated by the mediator. The parties shall not contact or forward documents to the mediator ~~unless the mediator requests the information~~ except as directed by the mediator or the court.

(b) ~~Counsel primarily responsible for the case and any unrepresented party shall attend the mediation session. All parties or principals of parties with decision making authority must attend the mediation session, unless attendance is excused by the mediator for good cause shown, and then shall be available by phone and be prepared to discuss: (1) all liability issues; (2) all damages issues; (3) all equitable and declaratory remedies if such are requested; and (4) the position of the parties relative to settlement. Counsel shall make arrangements with the client to be available by telephone or in person for the purpose of discussing settlement possibilities. Parties may be required to participate during the mediation session at the discretion of the mediator. Willful failure to attend the mediation conference shall be reported to the court and may result in the imposition of sanctions.~~ If the mediator determines that no settlement is likely to result from the mediation session, the mediator shall terminate the session and promptly thereafter file a report with the Clerk of Court stating that there has been compliance with the requirements of mediation in accordance with the local rules, but that no settlement has been reached. In the event that a settlement is achieved at the mediation session, the mediator shall file a report with the Clerk of Court stating that a settlement has been achieved. The order of referral may direct the mediator to file the report in a specific form.

(c) ~~No proceeding at any mediation session authorized by this rule (including any statement made or written submissions provided by a party, attorney, or other participant) shall be disclosed to any person not involved in the mediation process, unless otherwise stipulated in writing by all parties and the mediator. None of the proceedings shall be used~~

~~by any adverse party for any reason in the litigation at issue.~~ Unless stipulated in writing by all parties and the mediator or except as required by law or otherwise ordered by the court, all discussions which occur during mediation shall remain strictly confidential and no communication at any mediation session (including, without limitation, any verbal, nonverbal or written communication which refers to or relates to mediation of the pending litigation) shall be disclosed to any person not involved in the mediation process, and no aspect of the mediation session shall be used by anyone for any reason.

(d) ~~In the event the mediator determines that no settlement is likely to result from the mediation session, the mediator shall terminate the session and promptly thereafter file a report stating that there has been compliance with the requirements of this rule, but that no settlement has been reached. In the event that a settlement is achieved at the mediation session, the mediator shall file a report stating that a settlement has been achieved. (e)~~ No one shall have a recording or transcript made of the mediation session, including the mediator.

(~~f~~e) The mediator shall not be called to testify as to what transpired in the mediation session.

Explanation: *The proposed amendment eliminates ambiguous attendance requirements of existing subparagraph (b) in favor of a new rule devoted to specific attendance obligations (See new Rule 16.8.7 below). Changes made to the existing language of this rule are an attempt to clarify the confidential nature of communications made to or by mediators in the context of mediation, whether or not made in person or at the mediation session itself. Proposed changes to existing subparagraph (d) emphasize the mediator's obligation to file a report with the Clerk's Office. The changes also provide that judicial officers may prescribe that a report be in a certain form. With the elimination of existing language in subparagraph (b) the content of subparagraph (d) has been reconstructed and relocated to this paragraph. Consequently, the remaining subparagraphs have been re-lettered. Language has been added to the caption of the rule to include the confidentiality provisions of the rule.*

(edited version)

LR 16.8.6 The Mediation Session and Confidentiality of Mediation Communications.

(a) The mediation session shall take place as directed by the court and the assigned mediator. The mediation session shall take place in a neutral setting designated by the mediator. The parties shall not contact or forward documents to the mediator except as directed by the mediator or the court.

(b) If the mediator determines that no settlement is likely to result from the mediation session, the mediator shall terminate the session and promptly thereafter file a report with the Clerk of Court stating that there has been compliance with the requirements of mediation in accordance with the local rules, but that no settlement has been reached. In the event that a settlement is achieved at the mediation session, the mediator shall file a report with the Clerk of Court stating that a settlement has been achieved. The order of referral may direct the mediator to file the report in a specific form.

(c) Unless stipulated in writing by all parties and the mediator or except as required by law or otherwise ordered by the court, all discussions which occur during mediation shall remain strictly confidential and no communication at any mediation session (including, without limitation, any verbal, nonverbal or written communication which refers to or relates to mediation of the pending litigation) shall be disclosed to any person not involved in the mediation process, and no aspect of the mediation session shall be used by anyone for any reason.

(d) No one shall have a recording or transcript made of the mediation session, including the mediator.

(e) The mediator shall not be called to testify as to what transpired in the mediation session.

5. LR 16.8.7 Duties of Participants at the Mediation Session.

(a) Parties. All named parties and their counsel are required to attend the mediation session, participate in good faith and be prepared to discuss all liability issues, all defenses and all possible remedies, including monetary and equitable relief. Those in attendance shall possess complete settlement authority, independent of any approval process or supervision, except as set forth in subparagraphs (1) and (2) below. Unless attendance is excused under paragraph (d), willful failure to attend the mediation session will be reported by the mediator to the court and may result in the imposition of sanctions.

(1) Corporation or Other Entity. A party other than a natural person (e.g. a corporation or association) satisfies this attendance requirement if represented by a person (other than outside counsel) who either has authority to settle or who is knowledgeable about the facts of the case, the entity's position, and the policies and procedures under which the entity decides whether to accept proposed settlements.

(2) Government Entity. A unit or agency of government satisfies this attendance requirement if represented by a person who either has authority to settle or who is knowledgeable about the facts of the case, the government unit's position, and the policies and procedures under which the governmental unit decides whether to accept proposed settlements. If the action is brought by or defended by the government on behalf of one or more individuals, at least one such individual also shall attend.

(b) Counsel. Each party shall be accompanied at the mediation session by the attorney who will be primarily responsible for handling the trial of the matter.

(c) Insurers. Insurer representatives are required to attend in person unless excused under paragraph (d), below, if their agreement would be necessary to achieve a settlement. Insurer representatives shall possess complete settlement authority, independent of any approval process or supervision.

(d) Request to be Excused. A person who is required to attend a mediation session may be excused from attending in person only after a showing that personal attendance would impose an extraordinary or otherwise unjustifiable hardship. A person seeking to be excused must submit, no fewer than ten (10) days before the date set for the mediation, a written request to the mediator, simultaneously copying all counsel. The written request shall set forth all considerations that support the request and shall indicate whether the other party or parties

join in or object to the request. A proposed order prepared for the signature of the Judge shall be submitted to the mediator with the request. The mediator shall promptly consider the request and shall submit the proposed order to the Judge with a recommendation that the request be granted or denied. In the absence of an order excusing attendance, the person must attend.

Explanation: *This new proposed rule is an effort to eliminate ambiguity in the attendance requirement. It also creates a mechanism by which a person otherwise required to attend the mediation session in person can be excused. A good faith provision has been added to subparagraph (a). The term "complete" has been added to the rule to discourage any possible deflection of settlement authority. Language has been added to subparagraph (a)(1) &(2) and subparagraph (c) to make it clear who is to attend the mediation session and what level of settlement authority they are expected to have.*

(edited version)

LR 16.8.7 Duties of Participants at the Mediation Session.

(a) Parties. All named parties and their counsel are required to attend the mediation session, participate in good faith and be prepared to discuss all liability issues, all defenses and all possible remedies, including monetary and equitable relief. Those in attendance shall possess complete settlement authority, independent of any approval process or supervision, except as set forth in subparagraphs (1) and (2) below. Unless attendance is excused under paragraph (d), willful failure to attend the mediation session will be reported by the mediator to the court and may result in the imposition of sanctions.

(1) Corporation or Other Entity. A party other than a natural person (e.g. a corporation or association) satisfies this attendance requirement if represented by a person (other than outside counsel) who either has authority to settle or who is knowledgeable about the facts of the case, the entity's position, and the policies and procedures under which the entity decides whether to accept proposed settlements.

(2) Government Entity. A unit or agency of government satisfies this attendance requirement if represented by a person who either has authority to settle or who is knowledgeable about the facts of the case, the government unit's position, and the policies and procedures under which the governmental unit decides whether to accept proposed settlements. If the action is brought by or defended by the government on behalf of one or more individuals, at least one such individual also shall attend.

(b) Counsel. Each party shall be accompanied at the mediation session by the attorney who will be primarily responsible for handling the trial of the matter.

(c) Insurers. Insurer representatives are required to attend in person unless excused under paragraph (d), below, if their agreement would be necessary to achieve a settlement. Insurer representatives shall possess complete settlement authority, independent of any approval process or supervision.

(d) Request to be Excused. A person who is required to attend a mediation session may be excused from attending in person only after a showing that personal attendance would

impose an extraordinary or otherwise unjustifiable hardship. A person seeking to be excused must submit, no fewer than ten (10) days before the date set for the mediation, a written request to the mediator, simultaneously copying all counsel. The written request shall set forth all considerations that support the request and shall indicate whether the other party or parties join in or object to the request. A proposed order prepared for the signature of the Judge shall be submitted to the mediator with the request. The mediator shall promptly consider the request and shall submit the proposed order to the Judge with a recommendation that the request be granted or denied. In the absence of an order excusing attendance, the person must attend.

6. LR 83.2 ~~Regulation of Discussion relating to Criminal and Civil Litigation~~Extrajudicial Statements in Civil Proceedings.

(a) A lawyer representing a party in a civil matter triable to a jury shall not make any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer or other person knows or reasonably should know that it will have a substantial likelihood of causing material prejudice to an adjudicative proceeding.

(b) A statement referred to in LR 83.2(a) ordinarily is likely to have such an effect when it relates to:

(1) the character, credibility, reputation or criminal record of a party or witness, the identity of a witness, or the expected testimony of a party or witness;

(2) the performance or results of any examination or test, the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented; and

(3) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudice to an impartial trial.

(c) Notwithstanding LR 83.2(a) and (b), a lawyer involved in the litigation of a matter may state without elaboration:

(1) the general nature of a claim or defense;

(2) the information contained in a public record;

(3) the scheduling or result of any step in litigation; and

(4) a request for assistance in obtaining evidence and the information necessary thereto.

(d) Nothing in this Rule is intended to preclude either the formulation or application of more restrictive rules relating to the release of any information about parties or witnesses in an appropriate case.

(e) Nothing in this Rule is intended to apply to the holding of hearings or the lawful issuance of reports by legislative, administrative or investigative bodies, nor to a reply by any attorney to charges of misconduct publicly made against that attorney.

(f) The court's supporting personnel including, among others, the marshal, deputy marshals, the clerk, deputy clerks, court reporters and employees or subcontractors retained by the court-appointed official reporters, probation officers and their staffs, and members of the Judges' staffs, are prohibited from disclosing to any person, without authorization by the court, information relating to a proceeding that is not part of the public record of the court. The

disclosure of information concerning *in camera* arguments and hearings held in chambers or otherwise outside the presence of the public is also forbidden.

(g) The court, on motion of any party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of a party to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the court may deem appropriate for inclusion in such an order.

Explanation: *This new proposed rule is crafted to meet the "substantial likelihood of material prejudice" standard established by the ruling in Gentile v. State Bar of Nevada, 501 U.S. 1030, 1067 (1991)(Rehnquist, C.J.), which is the controlling law on the subject. The new rule covers all the issues addressed by our existing rules on the subject of Extrajudicial Statements in Civil Proceedings. The rule would serve as a replacement for LR 83.2.1, LR 83.2.7, and LR 83.5.*

(edited version)

LR 83.2 Extrajudicial Statements in Civil Proceedings.

(a) A lawyer representing a party in a civil matter triable to a jury shall not make any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer or other person knows or reasonably should know that it will have a substantial likelihood of causing material prejudice to an adjudicative proceeding.

(b) A statement referred to in LR 83.2(a) ordinarily is likely to have such an effect when it relates to:

(1) the character, credibility, reputation or criminal record of a party or witness, the identity of a witness, or the expected testimony of a party or witness;

(2) the performance or results of any examination or test, the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented; and

(3) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudice to an impartial trial.

(c) Notwithstanding LR 83.2(a) and (b), a lawyer involved in the litigation of a matter may state without elaboration:

(1) the general nature of a claim or defense;

(2) the information contained in a public record;

(3) the scheduling or result of any step in litigation; and

(4) a request for assistance in obtaining evidence and the information necessary thereto.

(d) Nothing in this Rule is intended to preclude either the formulation or application of more restrictive rules relating to the release of any information about parties or witnesses in an appropriate case.

(e) Nothing in this Rule is intended to apply to the holding of hearings or the lawful issuance of reports by legislative, administrative or investigative bodies, nor to a reply by any

attorney to charges of misconduct publicly made against that attorney.

(f) The court's supporting personnel including, among others, the marshal, deputy marshals, the clerk, deputy clerks, court reporters and employees or subcontractors retained by the court-appointed official reporters, probation officers and their staffs, and members of the Judges' staffs, are prohibited from disclosing to any person, without authorization by the court, information relating to a proceeding that is not part of the public record of the court. The disclosure of information concerning *in camera* arguments and hearings held in chambers or otherwise outside the presence of the public is also forbidden.

(g) The court, on motion of any party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of a party to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the court may deem appropriate for inclusion in such an order.

7. ~~LR 83.2.1 Release of Information by Attorneys.~~

~~It is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which the attorney or the firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.~~

Explanation: *The subject matter of this rule is covered by amended local rule LR 83.2 and new local criminal rule LCrR 57. This rule has therefore been eliminated.*

8. ~~LR 83.2.2 Extrajudicial Statements of Attorneys.~~

~~With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.~~

Explanation: *The subject matter of this rule is covered by newlocal criminal rule LCrR 57. This rule has therefore been eliminated.*

9. ~~LR 83.2.3 Limitations on Information to be Released.~~

~~From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition~~

~~without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication, relating to that matter and concerning:~~

~~(a) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in apprehension or to warn the public of any dangers the accused may present;~~

~~(b) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;~~

~~(c) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;~~

~~(d) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;~~

~~(e) The possibility of a plea of guilty to the offense charged or a lesser offense;~~

~~(f) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.~~

~~The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges.~~

Explanation: *The subject matter of this rule is covered by new local criminal rule LCrR 57. This rule has therefore been eliminated.*

10. ~~LR 83.2.4 Extrajudicial Statements during Trial.~~

~~During the trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview, relating to the trial or the parties or issues in the trial which a reasonable person would expect to be disseminated by means of public communication, except that the lawyer or law firm may quote from or refer without comment to public records of the court in the case.~~

Explanation: *The subject matter of this rule is covered by newlocal criminal rule LCrR 57. This rule has therefore been eliminated.*

11. ~~LR 83.2.5 Extrajudicial Statements after Trial.~~

~~After the completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.~~

Explanation: *The subject matter of this rule is covered by newlocal criminal rule LCrR 57. This rule has therefore been eliminated.*

12. ~~LR 83.2.6 Rules Relating to Juveniles.~~

~~Nothing in this rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to public charges of misconduct.~~

Explanation: *The subject matter of this rule is covered by newlocal criminal rule LCrR 57. This rule has therefore been eliminated.*

13. ~~LR 83.2.7 Extrajudicial Statements by Attorneys in Civil Cases.~~

~~A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is reasonable likelihood that such dissemination will interfere with a fair trial and which relates to:~~

~~(a) Evidence regarding the occurrence or transaction involved;~~

~~(b) The character, credibility, or criminal record of a party, witness, or prospective witness;~~

~~(c) The performance or results of any examinations or tests or the refusal or failure of~~

~~a party to submit to such;~~

~~(d) An opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule;~~

~~(e) Any other matter reasonably likely to interfere with a fair trial of the action;~~

~~(f) Any reference to the amount demanded, offered or involved.~~

Explanation: *The subject matter of this rule is covered by amended local rule LR 83.2. This rule has therefore been eliminated.*

14. ~~LR 83.2.8 Juror Contact.~~

~~No attorney or party or anyone acting on behalf of such attorney or party shall, without express permission from the court, initiate any communication with any juror pertaining to any case in which that juror may be drawn, is participating, or has participated.~~

Explanation: *This rule has been moved and renumbered LR 83.8, as the subject matter addresses quite a different matter from "Extrajudicial Statements" which is the newheading of this section.*

15. ~~LR 83.4 Release of Information by Courthouse Personnel in Criminal Cases.~~

~~All courtroom and courthouse personnel, including but not limited to marshals, deputy marshals, court clerks and office personnel, probation officers and office personnel, and the judges' office personnel, are hereby prohibited from disclosing to any person, without authorization by the court, information relating to a pending criminal case that is not part of the public records of the court. Particularly, all such personnel shall not divulge any information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.~~

Explanation: *The subject matter of this rule is covered by amended local rule LR 83.2 and new local criminal rule LCrR 57. This rule has therefore been eliminated.*

16. ~~LR 83.5 Special Orders in Widely Publicized Cases.~~

~~In a case which is or is likely to be widely publicized, the court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the court may deem appropriate for inclusion in such an order.~~

Explanation: *The subject matter of this rule is covered by amended local rule LR 83.2 and new local criminal rule LCrR 57. This rule has therefore been eliminated.*

17. LR 83.~~2.~~8 Juror Contact.

No attorney or party or anyone acting on behalf of such attorney or party shall, without express permission from the court, initiate any communication with any juror pertaining to any case in which that juror may be drawn, is participating, or has participated.

Explanation: *This rule has been moved from its original location as LR 83.2.8 to its new location in the chapter because it really addresses quite a different matter from the new heading of subchapter LR 83.2. Consequently, the rule has been renumbered LR 83.8.*

(edited version)

LR 83.8 Juror Contact.

No attorney or party or anyone acting on behalf of such attorney or party shall, without express permission from the court, initiate any communication with any juror pertaining to any case in which that juror may be drawn, is participating, or has participated.

18. *Chapter numbers and newheadings have been assigned to the expanding body of local criminal rules and new proposed rule LCrR 57 dealing with "Extrajudicial Statements in Criminal Proceedings has been added to the criminal rules section.*

SECTION II

CRIMINAL RULES

CHAPTER I

~~CRIMINAL RULES~~ INDICTMENT

LCrR 7.1 Superseding Indictments.

Upon the filing of a superseding indictment, the government shall file a statement indicating whether the United States has filed or will file a motion for a continuance of trial based upon the filing of the superseding indictment and indicating the changes that have been made in the superseding indictment in comparison to the preceding indictment.

CHAPTER II

PLEADINGS AND PRETRIAL MOTIONS

LCrR 12.1 Pretrial Motions: Duty To Address Speedy Trial Act Excludable Time Implications.

(a) A motion for a continuance of trial and any other pretrial motion filed after arraignment, whether by the government or the defendant, shall include:

(1) a statement of whether or not any delay occasioned by the making, hearing or granting of that motion will constitute, in whole or in part, excludable time as defined by 18 U.S.C. § 3161(h), and, if so, a statement or estimation of the number of days to be excluded or a statement describing how excludable time should be determined by reference to a specified future event; and

(2) a proposed form of order that, if adopted, will state fully and with particularity the reasons for granting the motion and that states with particularity the proposed findings of the court as to excludable time.

(b) A party opposing a motion shall file, with the responsive brief to the substance of the motion, its agreement with or opposition to the statements or estimations of the moving party made pursuant to subsection (a).

(c) Briefs in support of and in opposition to a motion for a continuance of trial shall be filed as follows:

(1) A party filing a motion for a continuance of trial shall file a supporting brief at the time the motion is filed. A brief shall not be required in support of a motion for a continuance trial if the reasons for the request, specifically the grounds in support of a finding that the ends of justice served by the granting of a continuance outweigh the best interests of the public and the defendant in a speedy trial, are fully stated in the motion.

(2) A party opposing a motion for a continuance of trial shall file a brief in opposition to the motion within five (5) days after service of the motion. No further briefs may be filed without leave of court.

(3) A party who does not file a brief in opposition to a motion shall be deemed not to oppose the motion.

(d) This rule shall not apply to any motion to be heard *ex parte*.

CHAPTER III

SERVING AND FILING OF PAPERS

LCrR 49 Filing of Documents under Seal

(a) Authorization required. Unless otherwise prescribed by federal statutes, the Federal Rules of Criminal Procedure, the Federal Rules of Civil Procedure or other provisions of these Rules, including LR 5.2(e), no document shall be filed under seal unless authorized by an order of court.

(b) Definitions.

(1) Document "filed under seal". A document filed under seal is a document that is filed and docketed in the case but held by the Clerk separate from other documents and not made available for inspection by any person except as permitted by order of the court.

(2) Document "pending sealing decision". A document pending sealing decision is a document that has been submitted to the Clerk with a motion to file the document under seal. Pending an order of the court deciding the motion to seal the document, the document is kept separate from other documents and is not made available for inspection by any person except as permitted by order of the court.

(c) Procedure

(1) Motion to file a document under seal. A motion to file a document under seal shall be filed on paper. The motion to file a document under seal shall contain no description or identification of the document for which the sealing order is sought or statement of reasons why the filing of the document under seal should be authorized.

(2) The presentation to the Clerk of the document(s) pending sealing decision. When the motion is filed, the party filing the motion shall present to the Clerk's Office, on paper:

a. the document(s) for which the sealing order is sought,

b. a statement of the legal and factual justification for the sealing order that is being sought, and

c. a proposed form of order.

The document(s), statement and proposed order shall be presented to the Clerk in a sealed envelope marked with the case number, case caption and the descriptive label of "Documents pending sealing decision."

(3) Document authorized to be filed under seal by an existing court order. A document authorized to be filed under seal by an existing court order shall be filed on paper accompanied by the court order authorizing it to be filed under seal and submitted in a sealed envelope marked with the case number, case caption, and the words "sealed document."

(d) Exempt documents. The Clerk shall in all cases, without motion, seal the following documents:

(1) A defendant's *ex parte* request for a subpoena, a writ of habeas corpus ad testificandum, or authorization to obtain investigative, expert or other services in accordance with subsection (e) of the Criminal Justice Act, 18 U.S.C. § 3006A(e).

(2) An *ex parte* request by the government for issuance of a writ of habeas corpus ad testificandum.

(3) Any writ issued in response to a request under subparagraph (1) and (2).

(4) A request in a criminal case by the defendant for substitution of appointed counsel.

(e) Motion to unseal. It shall be the duty of the party who obtained an order to file under seal to move to unseal the document as soon as the basis for the sealing order has ended.

CHAPTER IV

GENERAL PROVISIONS

LCrR 57 Extrajudicial Statements in Criminal Proceedings.

(a) A lawyer representing a party with respect to a criminal matter, or any other proceeding that could result in incarceration, shall not make any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer or other person knows or reasonably should know that it will have a substantial likelihood of causing material prejudice to an adjudicative proceeding. (b) A statement referred to in LCrR 57(a) ordinarily is likely to have such an effect when it relates to:

(1) the character, credibility, reputation or criminal record of a defendant, suspect in a criminal investigation or witness, the identity of a witness, or the expected testimony of a party or witness;

(2) the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission or statement given by a defendant or suspect, or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test, the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect; or

(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudice to an impartial trial.

(c) Notwithstanding LCrR 57(a) and (b), a lawyer involved in the investigation or prosecution of a matter may state without elaboration:

(1) the general nature of a charge or defense;

(2) the information contained in a public record;

(3) that an investigation of the matter is in progress, including the general scope of the investigation, the offense, claim or defense involved and, except when prohibited by law, the identity of the persons involved;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and the information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest;

(7) the identity, residence, occupation and family status of the accused;

(8) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(9) the fact, time and place of arrest; and

(10) the identity of investigating and arresting officers or agencies and the length of the investigation.

(d) The prohibitions set forth in LCrR 57(a), (b) and (c) pertain to all stages of criminal

proceedings, including investigation before a grand jury, the post-arrest pretrial period, jury selection, trial through verdict or disposition without trial and imposition of sentence.

(e) Nothing in this Rule is intended to preclude either the formulation or application of more restrictive rules relating to the release of any information about juvenile or other offenders.

(f) Nothing in this Rule is intended to apply to the holding of hearings or the lawful issuance of reports by legislative, administrative or investigative bodies, nor to a reply by any attorney to charges of misconduct publicly made against that attorney.

(g) The court's supporting personnel including, among others, the marshal, deputy marshals, the clerk, deputy clerks, court reporters and employees or subcontractors retained by the court-appointed official reporters, probation officers and their staffs, and members of the Judges' staffs, are prohibited from disclosing to any person, without authorization by the court, information relating to a proceeding that is not part of the public record of the court. The disclosure of information concerning *in camera* arguments and hearings held in chambers or otherwise outside the presence of the public is also forbidden.

(h) The court, on motion of any party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of a party to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the court may deem appropriate for inclusion in such an order.

Explanation: *This new proposed rule is crafted to meet the "substantial likelihood of material prejudice" standard established by the ruling in Gentile v. State Bar of Nevada, 501 U.S. 1030, 1067 (1991)(Rehnquist, C.J.), which is the controlling law on the subject. The newrule covers all the issues addressed by our existing rules on the subject of Extrajudicial Statements in Criminal Proceedings. The rule would serve as a replacement for LR 83.2.1, LR 83.2.2, 83.2.3, LR. 83.2.4, LR 83.2.5, LR 83.2.6, LR 83.4 and LR 83.5.*

The uniform numbering system adopted by the Judicial Conference requires that local rules be numbered according to its corresponding Federal Rule. Local rules for which there are no corresponding Federal Rules are to be correlated with the respective Federal Rule on local rule making. (Fed.R.Crim.P.57.) Since there are no corresponding Federal Rules on the subject of Extrajudicial Statements, this local rule is numbered LCrR 57.

LCrR 58.1 Magistrate Judges, Appeal from Judgments in Misdemeanor Cases - 18 U.S.C. § 3402.

An appeal from a judgment of conviction by a United States Magistrate Judge may be taken to a judge of the district court in accordance with Rule 58 of the Federal Rules of Criminal Procedure. The appellant shall, within fifteen (15) days of the date of filing of the appeal, serve and submit a brief. The United States Attorney shall serve and submit a brief within fifteen (15) days after receipt of a copy of the appellant's brief. The appellant may serve and submit a reply brief within five (5) days after receipt of the appellee's brief. The appeal shall be considered and disposed of on the briefs without hearing or oral argument unless the judge to whom the appeal is assigned specifically directs otherwise upon an application for

such hearing or argument by one or both of the parties. Any appellant who fails to comply with this rule shall be deemed to have withdrawn the appeal. If the United States Attorney in any such appeal fails to comply with this rule, it shall be deemed that the United States Attorney does not oppose the appeal.

LCrR 58.2 Petty Offenses Brought by Violation Notice.

An authorized enforcement officer may initiate a petty offense charge by a violation notice. A separate violation notice shall be used for each separate offense charged. The violation notice form shall be completed by stating the date and time of the offense, the offense charged, the place of the offense, an offense description, the defendant's name and address and other appropriate identification information, and vehicle description information when appropriate. The violation notice shall inform the defendant of the court address and of the date and time of the defendant's court appearance. The date, time and place for the defendant to appear in court shall be inserted by the issuing officer, at the time of issuing the violation notice, on the basis of instructions from the assigned United States Magistrate Judge. The violation notice shall inform the defendant whether the defendant must appear in court or may elect instead to forfeit collateral. The violation notice shall include a statement of probable cause made under penalty of perjury. The original and one copy of the violation notice(s) shall be promptly sent to the Central Violations Bureau by the issuing agency.

LCrR 58.3 Authority for Forfeiture of Collateral in Certain Petty Offenses; Forfeiture of Collateral Cases - Procedures.

(a) In the case of a petty offense listed in the court's **Standing Order Re: Forfeiture of Collateral Schedule**, the violation notice shall be completed by the issuing officer so as to contain the collateral forfeiture amount established by the **Forfeiture of Collateral Schedule**, except that if a mandatory appearance is an option under the **Forfeiture of Collateral Schedule** the issuing officer may elect not to insert a collateral forfeiture amount upon the violation notice and to therefore require the appearance of the defendant in court.

The **Forfeiture of Collateral Schedule** does not create or define any offense. Offenses are created and defined by federal statutes or regulations, or assimilated state statutes. A violation notice must refer by citation to the applicable statute(s) or regulation(s).

(b) The violation notice shall contain instructions for paying the collateral to the Central Violations Bureau. The defendant shall be given a mail-in envelope addressed to the Central Violations Bureau Lock Box by the issuing officer. The violation notice shall contain a check-off option for the defendant to state an election to forfeit collateral or to plead not guilty and to promise to appear in court. The notice shall instruct the defendant to mail the violation notice form stating the defendant's election to the Central Violations Bureau in no more than twenty-one (21) days.

(c) A collateral forfeiture amount shall not be inserted upon a violation notice for any offense not included in the **Forfeiture of Collateral Schedule**.

(d) When an "X" appears next to a listed violation in the **Forfeiture of Collateral Schedule**, the issuing officer may, in his or her discretion, elect not to insert a forfeiture of collateral amount upon the violation notice and therefore require the appearance of the

defendant in court. A mandatory appearance may be chosen by the issuing officer when there is good cause for not permitting a collateral forfeiture.

(e) When the charged petty offense is not listed in the **Forfeiture of Collateral Schedule**, or when a mandatory appearance is chosen by the issuing officer for an "X" designated charged petty offense, forfeiture of collateral by the defendant will not be permitted. The appearance of the defendant in court, as provided under Rule 58 of the Federal Rules of Criminal Procedure, is required.

(f) For any petty offense in which the issuing officer does not insert a collateral amount as provided under these Rules and the **Forfeiture of Collateral Schedule**, the defendant shall be issued a violation notice containing the information required in these Rules, except that in the space provided for the amount of collateral there shall be inserted the letters "MA" (Mandatory Appearance). The violation notice shall contain a check-off box stating "You must appear in court." This box shall be checked by the issuing officer in the case of a mandatory appearance violation notice.

(g) Remittance of collateral by a defendant shall be deemed a forfeiture of collateral, unless otherwise ordered by the court. A forfeiture of collateral is taken by the court as an acknowledgment of no contest to the violation notice and as an acknowledgment of guilt. The defendant is deemed convicted of the offense for which collateral is forfeited.

(h) (1) In a case where the defendant does not forfeit collateral and does not appear in court on the date and at the time and place set forth on the violation notice, a Notice to Appear may be issued by the magistrate judge or an arrest warrant may be issued upon a showing of probable cause and of actual notice to the defendant to appear. The court may, upon issuing a Notice to Appear, afford the defendant an additional opportunity to forfeit collateral or may convert the violation notice to a mandatory appearance.

(2) If the defendant does not appear as directed by a Notice to Appear, the magistrate judge may issue an arrest warrant upon a showing of probable cause. The amount of collateral may be increased up to the amount of the maximum fine provided for by law, or collateral forfeiture may be eliminated as an option.

(Edited version)

SECTION II

CRIMINAL RULES

CHAPTER I

INDICTMENT

LCrR 7.1 Superseding Indictments.

Upon the filing of a superseding indictment, the government shall file a statement indicating whether the United States has filed or will file a motion for a continuance of trial based upon the filing of the superseding indictment and indicating the changes that have been made in the superseding indictment in comparison to the preceding indictment.

CHAPTER II

PLEADINGS AND PRETRIAL MOTIONS

LCrR 12.1 Pretrial Motions: Duty To Address Speedy Trial Act Excludable Time Implications.

(a) A motion for a continuance of trial and any other pretrial motion filed after arraignment, whether by the government or the defendant, shall include:

(1) a statement of whether or not any delay occasioned by the making, hearing or granting of that motion will constitute, in whole or in part, excludable time as defined by 18 U.S.C. § 3161(h), and, if so, a statement or estimation of the number of days to be excluded or a statement describing how excludable time should be determined by reference to a specified future event; and

(2) a proposed form of order that, if adopted, will state fully and with particularity the reasons for granting the motion and that states with particularity the proposed findings of the court as to excludable time.

(b) A party opposing a motion shall file, with the responsive brief to the substance of the motion, its agreement with or opposition to the statements or estimations of the moving party made pursuant to subsection (a).

(c) Briefs in support of and in opposition to a motion for a continuance of trial shall be filed as follows:

(1) A party filing a motion for a continuance of trial shall file a supporting brief at the time the motion is filed. A brief shall not be required in support of a motion for a continuance trial if the reasons for the request, specifically the grounds in support of a finding that the ends of justice served by the granting of a continuance outweigh the best interests of the public and the defendant in a speedy trial, are fully stated in the motion.

(2) A party opposing a motion for a continuance of trial shall file a brief in opposition to the motion within five (5) days after service of the motion. No further briefs may be filed without leave of court.

(3) A party who does not file a brief in opposition to a motion shall be deemed not to oppose the motion.

(d) This rule shall not apply to any motion to be heard *ex parte*.

CHAPTER III

SERVING AND FILING OF PAPERS

LCrR 49 Filing of Documents under Seal

(a) Authorization required. Unless otherwise prescribed by federal statutes, the Federal Rules of Criminal Procedure, the Federal Rules of Civil Procedure or other provisions of these Rules, including LR 5.2(e), no document shall be filed under seal unless authorized by an order of court.

(b) Definitions.

(1) Document "filed under seal". A document filed under seal is a document that is filed and docketed in the case but held by the Clerk separate from other documents and not made available for inspection by any person except as permitted by order of the court.

(2) Document "pending sealing decision". A document pending sealing decision is a document that has been submitted to the Clerk with a motion to file the document under seal. Pending an order of the court deciding the motion to seal the document, the document is kept separate from other documents and is not made available for inspection by any person except as permitted by order of the court.

(c) Procedure

(1) Motion to file a document under seal. A motion to file a document under seal shall be filed on paper. The motion to file a document under seal shall contain no description or identification of the document for which the sealing order is sought or statement of reasons why the filing of the document under seal should be authorized.

(2) The presentation to the Clerk of the document(s) pending sealing decision. When the motion is filed, the party filing the motion shall present to the Clerk's Office, on paper:

a. the document(s) for which the sealing order is sought,

b. a statement of the legal and factual justification for the sealing order that is being sought, and

c. a proposed form of order.

The document(s), statement and proposed order shall be presented to the Clerk in a sealed envelope marked with the case number, case caption and the descriptive label of "Documents pending sealing decision."

(3) Document authorized to be filed under seal by an existing court order. A document authorized to be filed under seal by an existing court order shall be filed on paper accompanied by the court order authorizing it to be filed under seal and submitted in a sealed envelope marked with the case number, case caption, and the words "sealed document."

(d) Exempt documents. The Clerk shall in all cases, without motion, seal the following documents:

(1) A defendant's *ex parte* request for a subpoena, a writ of habeas corpus ad testificandum, or authorization to obtain investigative, expert or other services in accordance with subsection (e) of the Criminal Justice Act, 18 U.S.C. § 3006A(e).

(2) An *ex parte* request by the government for issuance of a writ of habeas corpus ad testificandum.

(3) Any writ issued in response to a request under subparagraph (1) and (2).

(4) A request in a criminal case by the defendant for substitution of appointed counsel.

(e) Motion to unseal. It shall be the duty of the party who obtained an order to file under seal to move to unseal the document as soon as the basis for the sealing order has ended.

CHAPTER IV

GENERAL PROVISIONS

LCrR 57 Extrajudicial Statements in Criminal Proceedings.

(a) A lawyer representing a party with respect to a criminal matter, or any other proceeding that could result in incarceration, shall not make any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer or other person knows or reasonably should know that it will have a substantial likelihood of causing material prejudice to an adjudicative proceeding. (b) A statement referred to in LCrR 57(a) ordinarily is likely to have such an effect when it relates to:

(1) the character, credibility, reputation or criminal record of a defendant, suspect in a criminal investigation or witness, the identity of a witness, or the expected testimony of a party or witness;

(2) the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission or statement given by a defendant or suspect, or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test, the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect; or

(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudice to an impartial trial.

(c) Notwithstanding LCrR 57(a) and (b), a lawyer involved in the investigation or prosecution of a matter may state without elaboration:

(1) the general nature of a charge or defense;

(2) the information contained in a public record;

(3) that an investigation of the matter is in progress, including the general scope of the investigation, the offense, claim or defense involved and, except when prohibited by law, the identity of the persons involved;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and the information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest;

(7) the identity, residence, occupation and family status of the accused;

(8) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(9) the fact, time and place of arrest; and

(10) the identity of investigating and arresting officers or agencies and the length of the investigation.

(d) The prohibitions set forth in LCrR 57(a), (b) and (c) pertain to all stages of criminal

proceedings, including investigation before a grand jury, the post-arrest pretrial period, jury selection, trial through verdict or disposition without trial and imposition of sentence.

(e) Nothing in this Rule is intended to preclude either the formulation or application of more restrictive rules relating to the release of any information about juvenile or other offenders.

(f) Nothing in this Rule is intended to apply to the holding of hearings or the lawful issuance of reports by legislative, administrative or investigative bodies, nor to a reply by any attorney to charges of misconduct publicly made against that attorney.

(g) The court's supporting personnel including, among others, the marshal, deputy marshals, the clerk, deputy clerks, court reporters and employees or subcontractors retained by the court-appointed official reporters, probation officers and their staffs, and members of the Judges' staffs, are prohibited from disclosing to any person, without authorization by the court, information relating to a proceeding that is not part of the public record of the court. The disclosure of information concerning *in camera* arguments and hearings held in chambers or otherwise outside the presence of the public is also forbidden.

(h) The court, on motion of any party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of a party to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the court may deem appropriate for inclusion in such an order.

LCrR 58.1 Magistrate Judges, Appeal from Judgments in Misdemeanor Cases - 18 U.S.C. § 3402.

An appeal from a judgment of conviction by a United States Magistrate Judge may be taken to a judge of the district court in accordance with Rule 58 of the Federal Rules of Criminal Procedure. The appellant shall, within fifteen (15) days of the date of filing of the appeal, serve and submit a brief. The United States Attorney shall serve and submit a brief within fifteen (15) days after receipt of a copy of the appellant's brief. The appellant may serve and submit a reply brief within five (5) days after receipt of the appellee's brief. The appeal shall be considered and disposed of on the briefs without hearing or oral argument unless the judge to whom the appeal is assigned specifically directs otherwise upon an application for such hearing or argument by one or both of the parties. Any appellant who fails to comply with this rule shall be deemed to have withdrawn the appeal. If the United States Attorney in any such appeal fails to comply with this rule, it shall be deemed that the United States Attorney does not oppose the appeal.

LCrR 58.2 Petty Offenses Brought by Violation Notice.

An authorized enforcement officer may initiate a petty offense charge by a violation notice. A separate violation notice shall be used for each separate offense charged. The violation notice form shall be completed by stating the date and time of the offense, the offense charged, the place of the offense, an offense description, the defendant's name and address and other appropriate identification information, and vehicle description information when appropriate. The violation notice shall inform the defendant of the court address and of the date and time of the defendant's court appearance. The date, time and place for the

defendant to appear in court shall be inserted by the issuing officer, at the time of issuing the violation notice, on the basis of instructions from the assigned United States Magistrate Judge. The violation notice shall inform the defendant whether the defendant must appear in court or may elect instead to forfeit collateral. The violation notice shall include a statement of probable cause made under penalty of perjury. The original and one copy of the violation notice(s) shall be promptly sent to the Central Violations Bureau by the issuing agency.

LCrR 58.3 Authority for Forfeiture of Collateral in Certain Petty Offenses; Forfeiture of Collateral Cases - Procedures.

(a) In the case of a petty offense listed in the court's **Standing Order Re: Forfeiture of Collateral Schedule**, the violation notice shall be completed by the issuing officer so as to contain the collateral forfeiture amount established by the **Forfeiture of Collateral Schedule**, except that if a mandatory appearance is an option under the **Forfeiture of Collateral Schedule** the issuing officer may elect not to insert a collateral forfeiture amount upon the violation notice and to therefore require the appearance of the defendant in court.

The **Forfeiture of Collateral Schedule** does not create or define any offense. Offenses are created and defined by federal statutes or regulations, or assimilated state statutes. A violation notice must refer by citation to the applicable statute(s) or regulation(s).

(b) The violation notice shall contain instructions for paying the collateral to the Central Violations Bureau. The defendant shall be given a mail-in envelope addressed to the Central Violations Bureau Lock Box by the issuing officer. The violation notice shall contain a check-off option for the defendant to state an election to forfeit collateral or to plead not guilty and to promise to appear in court. The notice shall instruct the defendant to mail the violation notice form stating the defendant's election to the Central Violations Bureau in no more than twenty-one (21) days.

(c) A collateral forfeiture amount shall not be inserted upon a violation notice for any offense not included in the **Forfeiture of Collateral Schedule**.

(d) When an "X" appears next to a listed violation in the **Forfeiture of Collateral Schedule**, the issuing officer may, in his or her discretion, elect not to insert a forfeiture of collateral amount upon the violation notice and therefore require the appearance of the defendant in court. A mandatory appearance may be chosen by the issuing officer when there is good cause for not permitting a collateral forfeiture.

(e) When the charged petty offense is not listed in the **Forfeiture of Collateral Schedule**, or when a mandatory appearance is chosen by the issuing officer for an "X" designated charged petty offense, forfeiture of collateral by the defendant will not be permitted. The appearance of the defendant in court, as provided under Rule 58 of the Federal Rules of Criminal Procedure, is required.

(f) For any petty offense in which the issuing officer does not insert a collateral amount as provided under these Rules and the **Forfeiture of Collateral Schedule**, the defendant shall be issued a violation notice containing the information required in these Rules, except that in the space provided for the amount of collateral there shall be inserted the letters "MA" (Mandatory Appearance). The violation notice shall contain a check-off box stating "You must appear in court." This box shall be checked by the issuing officer in the case of a mandatory

appearance violation notice.

(g) Remittance of collateral by a defendant shall be deemed a forfeiture of collateral, unless otherwise ordered by the court. A forfeiture of collateral is taken by the court as an acknowledgment of no contest to the violation notice and as an acknowledgment of guilt. The defendant is deemed convicted of the offense for which collateral is forfeited.

(h) (1) In a case where the defendant does not forfeit collateral and does not appear in court on the date and at the time and place set forth on the violation notice, a Notice to Appear may be issued by the magistrate judge or an arrest warrant may be issued upon a showing of probable cause and of actual notice to the defendant to appear. The court may, upon issuing a Notice to Appear, afford the defendant an additional opportunity to forfeit collateral or may convert the violation notice to a mandatory appearance.

(2) If the defendant does not appear as directed by a Notice to Appear, the magistrate judge may issue an arrest warrant upon a showing of probable cause. The amount of collateral may be increased up to the amount of the maximum fine provided for by law, or collateral forfeiture may be eliminated as an option.